Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

REPLY COMMENTS OF THE

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SUMMARY

In an era of robust competition in communications, universal service support serves an important objective: it ensures through effective and efficient support mechanisms that, where there is no private sector business case, residences and businesses have access to vital communications service. That means both the services to be supported and the means for that support need to evolve in response to consumer demands and market conditions. That is the difficult yet critical challenge that the Commission has undertaken in this proceeding.

It is evident that, while the High-Cost fund has remained intact for decades, the world of telecommunications and broadband communications and the structure of the industry have changed dramatically. Consumers generally have a choice of voice service providers, including in most high-cost areas. Broadband communications is exploding, again with many entities offering these services in competition in most areas of the country. In addition, broadband is quickly supplanting voice as the most critical communication service. In essence, the premise that underlies the High-Cost fund – that government support is essential to ensure households in rural areas have access to voice service – has already become less accurate or relevant and that trend is certain to continue. The Commission endorses this view at the beginning of the *NPRM* when it states that "we propose to fundamentally modernize the Commission's Universal Service Fund" system.[1]

In its initial comments, ACA took to heart the Commission's endorsement that fundamental change is required in universal service support, including to reorient the fund to provide access to broadband services for unserved households. It set forth a comprehensive, forward-looking scheme to modernize the High-Cost fund, based on the Commission's proposal

[1] *NPRM*, ¶ 1.

to create a broadband-based Connect America Fund ("CAF") but with key refinements. ACA's proposal is based on the following policy objectives:

1. **Ensure Funding is Fiscally Responsible by Imposing a Hard Cap.** The High-Cost fund has grown enormously since the 1996 law was enacted, placing a strain on consumers and a drag on business. Moreover, it is riddled with inefficiencies. The Commission should insist on fiscal discipline and not permit any further growth in the size of the fund. Rather, funding for broadband should come from reductions in portions of the High-Cost fund.

2. **Eliminate High-Cost Support Where Competition Exists.** It is both inefficient and inequitable to provide High-Cost support for voice service in areas where supported providers offer the service. As a corollary, once support is withdrawn, those providers should not have any service obligations in those areas.

3. **Provide Broadband Support to Unserved Households on a Competitively-Neutral and Objective Basis**. There are numerous providers capable of deploying broadband networks, and, to use its funding most efficiently, the Commission should encourage as many providers as possible to participate in bringing broadband service to unserved households. Accordingly, in distributing broadband support, the Commission should award funding on a competitively-neutral and objective basis. In addition, to ensure service is sufficient and robust, any recipient of funding should be bound by service requirements that are part of the award criteria.

4. **Provide a Reasonable but Not Unlimited Transition Period.** All High-Cost support should transition to broadband (CAF) support over time so that the Commission can ensure its universal broadband objectives are achieved. However, the Commission should provide for a longer, but not unlimited, transition period for smaller incumbent telephone

companies because of their greater reliance on support. This also will help ensure that no household currently receiving supported service will be stranded.

As indicated in these reply comments, ACA has found many commenters agree with these objectives and with the specific policies needed to implement them. On the other hand, other commenting parties sought mainly to continue the current regime. Such a position is untenable in an industry that has changed so materially and where even greater change is certain. The Commission cannot turn back the clock nor should it. Rather, it needs to grasp the opportunity in this proceeding to reorient universal service support for the 21st century. As discussed in its initial comments and herein, ACA believes its plan, where it provides a phased transition to the new broadband fund while reforming High-Cost support, provides the basis for Commission action this year.

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REPLY COMMENTS OF
THE AMERICAN CABLE ASSOCIATION

The American Cable Association ("ACA"), by its attorneys, respectfully submits these Reply Comments in response to the Federal Communications Commission's (the "Commission") Notice of Proposed Rulemaking ("*NPRM*") in the above captioned proceeding.[2]

I. INTRODUCTION

The roots of the High-Cost fund go back at least sixty years. What was first a system of subsidies run by the telephone industry later evolved into one overseen by the government, first in 1984 with rules adopted by the Commission then later in 1996 with statutory provisions enacted by the Congress. Even with the government takeover more than twenty-five years ago, however, the basics of the High-Cost fund have remained the same: it provides

[2] *Connect America Fund et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (released Feb. 9, 2011).

funding primarily to local telephone companies to offer voice service in areas where the cost of providing service is substantially in excess of the national average.

Yet, while the High-Cost fund has remained intact for decades, the world of telecommunications and broadband communications and the structure of the industry has changed dramatically. Consumers generally have a choice of voice service providers, including in most high-cost areas. Broadband communications is exploding, again with many entities offering these services in most areas of the country. In addition, broadband is quickly supplanting voice as the most critical communication service. In essence, the premise that underlies the High-Cost fund – that government support is essential to ensure households in rural areas have access to voice service – has already become less accurate or relevant and that trend is certain to continue. The Commission endorses this view at the beginning of the *NPRM* when it states that "we propose to fundamentally modernize the Commission's Universal Service Fund" system.[3]

In its initial comments, ACA took to heart the Commission's endorsement that fundamental change is required in universal service support, including to reorient the fund to provide access to broadband services for unserved households.[4] It set forth a comprehensive, forward-looking scheme to modernize the High-Cost fund, based on the Commission's proposal to create a broadband-based Connect America Fund ("CAF") but with key refinements. ACA's proposal is based on the following policy objectives:

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[3] *NPRM*, ¶ 1.

[4] This view is shared by AT&T in its comments (at 82), where it states, "The Commission's existing universal service regime is fundamentally broken…The Commission should jettison this antiquated system and adopt a universal service regime that is better suited to further the Commission's broadband goals."

1. Ensure Funding is Fiscally Responsible by Imposing a Hard Cap. The High-Cost fund has grown enormously since the 1996 law was enacted, placing a strain on consumers and a drag on business. Moreover, it is riddled with inefficiencies. The Commission should insist on fiscal discipline and not permit any further growth in the size of the fund. Rather, funding for broadband should come from reductions in portions of the High-Cost fund.

2. Eliminate High-Cost Support Where Competition Exists. It is both inefficient and inequitable to provide High-Cost support for voice service in areas where supported providers offer the service. As a corollary, once support is withdrawn, those providers should not have any service obligations in those areas.

3. Provide Broadband Support to Unserved Households on a Competitively-Neutral and Objective Basis. There are numerous providers capable of deploying broadband networks, and, to use its funding most efficiently, the Commission should encourage as many providers as possible to participate in bringing broadband service to unserved households. Accordingly, in distributing broadband support, the Commission should award funding on a competitively-neutral and objective basis. In addition, to ensure service is sufficient and robust, any recipient of funding should be bound by service requirements that are part of the award criteria.

4. Provide a Reasonable but Not Unlimited Transition Period. All High-Cost support should transition to broadband (CAF) support over time so that the Commission can ensure its universal broadband objectives are achieved. However, the Commission should provide for a longer, but not unlimited, transition period for smaller incumbent telephone companies because of their greater reliance on support. This also will help ensure that no household currently receiving supported service will be stranded.

As indicated in these reply comments, ACA has found many commenters agree with these objectives and with the specific policies needed to implement them. On the other hand, other commenting parties sought mainly to continue the current regime. Such a position is untenable in an industry that has changed so materially and where even greater change is certain. The Commission cannot turn back the clock nor should it. Rather, it needs to grasp the opportunity in this proceeding to reorient universal service support for the 21st century. As discussed in its initial comments and herein, ACA believes its plan, where it provides a phased transition to the new broadband fund while reforming High-Cost support, provides the basis for Commission action this year.

II. REFORMING THE HIGH-COST FUND

Virtually all commenters recognize that the High-Cost fund must be reformed. Differences among commenters relate to the scope of reform and subsequent implementation. While there may be a variety of options for addressing reform, one thing is certain: the status quo is unacceptable. Any reform effort in seeking to meet public interest objectives will likely cause some (perhaps many) providers to receive less support than they do today, but such results should not inhibit the Commission from acting.

ACA is optimistic about the real possibility of adopting reforms this year to reorient the High-Cost fund to eliminate waste and improve efficiency and to enable the Commission to achieve its universal broadband objectives. But the Commission simply cannot move forward to establish the CAF, or permit any current support to continue, without first imposing real fiscal accountability. In any reform adopted, it is paramount that the Commission stanch the growth in High-Cost funding, thereby reducing the burden on consumers who are the ultimate funding source.

A. IMPOSING AN OVERALL CAP ON THE TOTAL HIGH-COST SUPPORT BUDGET (CAF PLUS ANY EXISTING HIGH-COST PROGRAMS) AT YEAR-END 2010 LEVELS IS ESSENTIAL

Many commenters strongly support the Commission's proposal to cap the overall budget for the CAF and any existing High-Cost programs so that its total fund size does not exceed the year-end 2010 High-Cost fund level.[5] Commenters provide ample rationale for why imposing a hard cap on the total CAF/High-Cost support budget is warranted.

First, without fiscal responsibility, the fundamental integrity of CAF/High-Cost support is undermined. As an off-budget subsidy program, which is not subject to the annual Congressional authorization and appropriations process, the universal service fund and each of its components is immediately suspect as being wasteful and subject to abuse by entities drawing from it. This is especially the case given the enormous growth in the size of the fund over the past 15 years. It thus is important for the long-term viability of the fund to instill fiscal responsibility, which a cap signifies.

Second, as some commenters note, further growth in High-Cost funding not only undermines the program's viability but also presents substantial risks because of the added burden on consumers, which could counter the Commission's broadband adoption efforts.[6]

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5 *See, e.g.*, Ad Hoc Telecommunications Users Committee Comments at 41; Comcast Comments at 11-12; Comments of Verizon/ Verizon Wireless at 55-58; CTIA Comments at i.; CBeyond/Integra/twtelecom Comments at 17; State Members of Federal State Joint Board Comments at 11; NASUCA Comments at 13. CenturyLink agrees that it is reasonable for the Commission to cap the fund, given that the contribution factor is at 14.9 percent, but does not propose that it be capped at year-end 2010 levels and also believes it should be adjusted for inflation. *See* CenturyLink Comments at 36. The New Jersey Board of Public Utilities believes that because waste and inefficiencies currently exist, the fund must be reduced, rather than capped. NJ BPU Comments at 2.

6 *See, e.g.*, Verizon/Verizon Wireless Comments at 57 (imposing "a cap on overall high cost funding is the prudent option to protect consumers and keep the size of the fund manageable"); Comcast Comments at 12 (noting that "universal service subsidies are a burden on consumers and may have an adverse impact on subscribership in unsubsidized areas."); AT&T Comments at 85-86 ("And an excessively large fund would

Imposing a cap will direct the focus of all involved to ensure that the fund will efficiently enable broadband expansion where needed without further burdening consumers. Even with a hard cap, the year-end 2010 funding level for CAF will be sufficient to transition from the current support mechanisms and allow the Commission to meet its goal of driving universal access to affordable broadband services. ACA agrees with Verizon that there is no practical reason why consumers should not expect to see USF contributions decrease over time as funding to support voice and broadband service is targeted only to those areas where service is uneconomic.[7]

Third, imposing a cap will force the Commission to undertake a comprehensive review and eliminate the excesses and inefficiencies associated with the current program. The resulting savings can be used to establish and fund the CAF. As Verizon and others note, if the Commission is successful, it will establish an expectation that funding will decrease over time, as broadband is deployed into unserved areas and technology drives greater efficiencies.[8]

Fourth, as has been noted, the Commission is affirmatively obligated under the Act to keep the fund from growing too large.[9] There is ample legal support and precedent for capping the fund at the 2010 level. Courts have uniformly held that the Commission has an affirmative obligation under the Act to ensure the fund does not grow too large. For example, the D.C. Circuit in upholding a cap on High-Cost support for CETCs, found that the Commission must exercise fiscal responsibility with universal service funding by "balanc[ing] the risks of excessive subsidization with the principles set forth in § 254(b)" and "consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the

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unnecessarily burden those contributors, making broadband service less affordable and undermining the Commission's adoption goals.")

7 Verizon/Verizon Wireless Comments at 57-58; Comcast Comments at 11, 16; State Members of Federal State Joint Board Comments at 11.

8 *See, e.g.*, Verizon/Verizon Wireless Comments at 55; Comcast Comments at 16.

9 *See* Verizon/Verizon Wireless Comments at 56.

burden on customers who continue to maintain telephone service."[10] The court concluded that it was "entirely reasonable" for the Commission to "consider its interest in avoiding excessive funding from consumers."[11] The Fifth Circuit previously had recognized in its *Alenco* decision that the Commission's "broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service."[12] The *Alenco* court also noted that "excessive funding may itself violate the Act by "detract[ing] from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market."[13] The Tenth Circuit expressed similar concerns in its *Qwest II* decision, acknowledging that "excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1)."[14]

Certain rural local exchange carrier commenters oppose capping the fund, even going so far as to claim that a larger fund is needed.[15] But these positions fail to sufficiently account for the important fact that ordinary consumers bear the considerable burden of financing the universal service fund. As ACA discussed in its initial comments, the High-Cost fund has grown enormously since passage of the 1996 Telecommunications Act: over the 13 year period from 1997 through 2010, the High-Cost fund quadrupled in size.[16] As Comcast notes, the

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10 *See Rural Cellular Assoc., et al. v. FCC*, 588 F.3d 1095. 1102 (D.C. Cir 2009) ("*Rural Cellular*").

11 *See Rural Cellular*, 588 F.3d at 1103.

12 *See Alenco Comm'ns, Inc. et al. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) ("*Alenco*").

13 *Alenco*, 201 F.3d at 620.

14 *See Qwest Comm's Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) ("*Qwest II*") (*citing Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

15 *See, e.g.*, Blooston Rural Carriers Comments at 7-9; Comments of Cellular One/Viaero Wireless at 11-13; Utah Rural Telecom Assn Comments at 2-4; US Cellular Comments at 9, 78.

16 ACA Comments at 9.

continued growth and overall size of the fund both "undermine the program's viability and place significant burdens on rate-paying consumers."[17] To realize meaningful reform without unfairly burdening consumers, providers must develop sustainable business models that rely primarily on end-user revenue, rather than forcing consumers to continue to pay unfair subsidies. This is the only way to ensure the long-term viability of the fund.

B. HIGH-COST SUPPORT SHOULD END WHERE THERE IS COMPETITION

In its comments, ACA noted that competition for voice service has developed in many areas where entities currently receive High-Cost support, and in such areas funding is no longer required.[18] This support can be retargeted and used to fund the CAF. Many commenters agree that support should not be provided where competitors covering a significant part of an area are providing service.[19] The National Cable & Telecommunications Association, for instance, states, "high-cost support should be targeted to areas where there is no private sector

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17 Comcast Comments at 11.

18 ACA Comments at 3.

19 *See, e.g.* Time Warner Cable Comments at 20 ("the fact that new entrants like TWC are able to offer voice services on an unsubsidized basis further calls into question the need for continuing high-cost support in many areas. TWC thus has supported proposals that would reduce or eliminate USF support in those areas of the country where extensive, unsubsidized facilities-based voice competition exists"); Cbeyond/Integra/twtelecom Comments at 18 ("the FCC should immediately transfer high-cost support currently provided to incumbent LECs in areas where local telephone service rates have been deregulated to the CAF for use in areas unserved by broadband providers. It is wasteful and inefficient for the Commission to continue to subsidize local telephone service in areas where the relevant state commission has effectively determined that numerous service providers can efficiently serve the relevant market."); Verizon Comments at 61-62 ("financial support…must not be used to fund build-out in any area that is already being served by an unsubsidized provider...As the Joint Board recognized almost four years ago, it is not "in the public interest to use federal high-cost support to subsidize competition and build duplicative networks . . . ." *Recommended Decision* ¶ 35."); NJ BPU Comments at 4 ("federal USF should provide funding only in geographic areas where there is no private sector business case to provide broadband and high-quality voice-grade service").

business case to offer service and phased out in areas where unsubsidized providers are offering service."[20]

As stated earlier in these comments, it is inefficient and inequitable to provide government support in areas where unsupported competitors offer service. The Commission thus should view the advent of widespread competition for voice service as an opportunity to undertake a task long past due: target High-Cost support so it reaches those areas where no unsupported entity is providing or will soon provide voice service. This in turn will free-up significant funding to support the CAF.

C. FUNDING SOURCES FOR THE CAF

Commenters agree that funding for fixed broadband through the CAF can be achieved in several ways. First, many commenters strongly agree with ACA and the Commission that existing "interim" High-Cost support mechanisms have outlived their usefulness and therefore should be phased out.[21] Savings resulting from these reductions can be used to fund the CAF.[22]

Second, ACA proposed a process to disaggregate current High-Cost support based on the existence of competition for voice service or the need for broadband support, thus freeing-up funding for the CAF.[23] Certain carriers support ACA's view that the Commission disaggregate support within the service territory of telecommunications carriers where a

[20] National Cable & Telecommunications Association Comments at 2.

[21] *See, e.g.*, Comcast Comments at 12-16; Cox Comments at 9-11; Time Warner Cable Comments at 25; CTIA Comments at 14-18.

[22] Comcast (at 16) urges the Commission to consider using part of the savings resulting from these efforts to reduce the size of the existing fund.

[23] ACA Comments at ii-iii.

competitor is offering voice or broadband service without relying on support.[24] Such action would provide additional support for the CAF, without affecting the telecommunications carrier's ability to provide the supported services to their customers (especially given ACA's proposal to phase-in the disaggregation process for smaller ETCs).[25] Some commenters urge the Commission to immediately transfer High-Cost support currently provided to incumbent LECs in areas where local telephone service rates have been deregulated to the CAF for use in areas unserved by broadband providers.[26] As Time Warner Cable notes, a fundamental problem with the existing High-Cost mechanism is that funding is not based on any remote showing of need, but instead on inflated measures of cost.[27]

Finally, commenters agree that the Commission should establish a process that ensures that all dollars for High-Cost support are truly needed. As noted by certain commenters, it would be wasteful and inefficient to use CAF funding in areas already served by unsubsidized providers because the presence of such a competitor demonstrates that subsidies are unnecessary.[28] For instance, CTIA notes, because the purpose of High-Cost support is to ensure "sufficient funding of customers, not providers," continued support in these circumstances violates the competitive neutrality principle by propping up legacy inefficiencies and imposing

24 *See, e.g.*, Cbeyond/Integra/twtelecom Comments at 18; CTIA Comments at 14-15; Time Warner Cable Comments at 29.

25 ACA is not suggesting that there is a 1:1 correlation between the number of access lines removed from support because of the existence of an unsupported competitor and the amount of High-Cost support that would be reduced. ACA recognizes that sufficient support should be continued to areas where there is no competition and that this amount may be a larger percentage of prior support that the percentage of access lines no longer receiving support.

26 Cbeyond/Integra/twtelecom Comments at 18.

27 Time Warner Cable Comments at 19.

28 *See, e.g.*, Cbeyond/Integra/twtelecom Comments at 18.

additional costs on customers served by alternative providers in such high-cost areas.[29] AT&T proposes, "High-cost census blocks should be eligible for CAF funding…unless a non-ETC provider already offers fixed 'broadband' service there."[30] Moreover, providing support in areas already served makes it nearly impossible to maintain funding at a reasonable level.[31]

D. <u>SUPPORT FOR ACA'S PLAN TO TRANSITION ALL HIGH-COST SUPPORT TO THE CAF</u>

Many commenters agree with ACA that the Commission should immediately begin to transition legacy High-Cost support to the CAF rather than modify existing support mechanisms. For example, rather than delaying comprehensive universal service reform, AT&T argues that the Commission should not implement its proposed Phase I program, but instead immediately create its final CAF to provide support for the deployment and maintenance of

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29 CTIA Comments at 27. Also, CTIA notes (at 26) that competitive and technological neutrality, as well as efficiency, would be advanced by such elimination).

30 AT&T Comments at 97. ACA also agrees with AT&T (at 76) that an ETC should have "an obligation to serve a given geographic area *only* when the ETC receives high-cost support for that area." *See also*, CenturyLink Comments at 33, 35-36, where it states that CAF funding should not be awarded in areas where unsupported providers offer service. CenturyLink then adds that there may be households in these areas without access to competitive service and that support should be available to serve these households. ACA believes that CenturyLink's objective of providing service to these particular households can be best achieved by disaggregating study areas into census blocks so that support can be sharply target where it is needed. In addition, ACA has proposed that satellite service be considered a viable alternative in the least dense (highest cost) areas and that vouchers for households be considered for underserved areas. At the same time, ACA submits that an unserved area should be defined as one where at least 90% of the households in a census block lack access to adequate broadband service.

Also, in regard to CAF distributions, whether a provider intends to offer service in an area is relevant when it comes to determining whether, for purposes of distributing CAF funding, an area is unserved. In its comments (at 23), ACA proposed a process whereby potential unserved areas would be put out for public comment to determine whether a provider already or would soon serve the area. Certain commenters agree with ACA's proposal. *See, e.g.*, CenturyLink Comments at 33 (contending that such challenge should be part of the award process prior to bidding, not be unduly burdensome, and be resolved prior to continuing the bid process).

31 Cox Comments at 3.

broadband service in high-cost areas throughout the country.[32] Under AT&T's proposal, as soon as final CAF rules are issued, all legacy high-cost support should be phased down and that funding should be transitioned, over a five year period, to the CAF (though the phase down period may be shorter for some legacy ETCs).[33] Further, under AT&T's proposal, the transition should be identical for all legacy high-cost support, regardless of the mechanism and regardless of the type of carrier.[34] AT&T also argues that reductions in legacy support should be implemented at the holding company level, and not, for example, in each individual wire center where a provider receives support.[35] CenturyLink believes that to ensure ubiquitous quality broadband and voice services, the Commission must develop the Phase I and long term CAF phases in tandem.[36]

III. CREATING THE CAF

A. FIXED VERSUS MOBILE

Certain commenters support ACA's proposal to establish separate support for fixed and mobile broadband providers within the CAF.[37] Under ACA's proposal, which was based on the fact that these two services are not close substitutes, the Commission would assess the unserved nature of fixed and mobile broadband service separately, and then determine funding objectives and budgets for each.[38] This would help ensure funding is more effective and efficient. For instance, AT&T states that the separate fund to support mobile is likely to be quite

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32 AT&T Comments at 83.

33 *Id.* at 90.

34 *Id.* at 109.

35 *Id.*

36 CenturyLink Comments at 31.

37 *See, e.g.*, AT&T Comments at 109; State Members of the Federal State Joint Board Comments at 27.

38 ACA in its comments (at 14-15) submitted that the Commission's proposed Mobility Fund represents a good example of this type of targeted funding.

small because mobile providers already have deployed broadband service in many rural and high-costs areas, which means that fewer census blocks will require support from that fund than from the CAF supporting fixed broadband services.[39]

The Rural Associations also favor separate support for fixed and mobile broadband but with a twist that will greatly inflate government funding. They argue that because most households and businesses in urban areas have access to affordable fixed and mobile broadband services, and consumers in high-cost and urban areas have the same needs, then support should be provided to one fixed broadband network and one mobile broadband network in each high-cost area, under the "reasonable comparability" requirement of section 254.[40] The Rural Association's position ignores the fact that purely private (unsupported) business models may be sufficient to deploy fixed or mobile broadband in these areas. It also alters the requisite reasonableness limitation on the comparability standard and replaces it with an "exact comparability" requirement. Adoption of the Rural Association's proposal would require High-Cost funding to be expanded by orders of magnitude significantly beyond current funding levels, which runs counter to ACA's strong belief that funding must be fiscally responsible.

B. AWARDING CAF SUPPORT

Several commenters echo ACA's conclusion that CAF funds should be distributed via a single-winner, market-based mechanism, such as a reverse (or procurement) auction, which are competitively and technologically neutral, because such methods will create incentives to contain costs and determine the least amount of funding needed based on market forces.[41] The

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39 AT&T Comments at 109.

40 NECA *et al.* Comments at 83.

41 *See, e.g.*, Verizon Comments at 58-59 (asserting that the benefits of competitive bidding include technology-neutral bidding participation, better knowledge of service costs in discrete areas, and streamlined quality control processes through standard contracts with winning bidders); CTIA Comments at 22; Time Warner Cable Comments at 26.

adoption of such approaches will ensure that broadband support is efficient and is used to stimulate technological innovation, rather than be used to guarantee a sufficient return on investment for legacy costs. It also will maximize use of overall funding for the CAF.

While ACA supports permitting smaller incumbent telephone companies to elect to continue to draw High-Cost support in return for deploying higher-speed broadband service, it is only for a limited, transitional period. It does not believe that this exception should be extended to other High-Cost fund recipients, and that, as a general rule, all support should be subject to the CAF's competitive award process and requirements. Certain other commenters also oppose using an "election" or "right of first refusal" approach, arguing that such an approach runs counter to the objective of transforming the universal service program into an efficient, narrowly targeted program responsive to consumer demands.[42] According to CTIA, giving the incumbent the option of becoming the only CAF recipient through a "right of first refusal" flatly contradicts the principles of competitive and technological neutrality, because it would lock in the incumbent's monopoly by indefinitely hindering competitive alternatives.[43] In short, such an approach would not only significantly hamstring the competitive pressure brought by other providers, but would represent an unnecessary increase in the amount of support needed in many areas of the country.[44]

C. ELIGIBILITY FOR PARTICIPATION IN AUCTIONS

First, ACA agrees with AT&T that the Commission has statutory authority under sections 254 and 706 and Title I of the Communications Act to provide support for the provision

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42 *See, e.g.*, Verizon Comments at 64.

43 CTIA Comments at 24.

44 *Id.* at 26.

of broadband services using universal service funds.[45] Further, to maximize the value of the CAF in deploying broadband in unserved areas, the Commission should seek to encourage qualified broadband providers to bid in reverse auctions. Accordingly, as discussed below, the Commission will need to reformulate the application of section 254(e) ETC requirements. This can be accomplished consistent with both the spirit and letter of the statute.

1. **ETC APPLICATIONS SHOULD BE FILED POST-AUCTION WITH THE FCC SOLELY RESPONSIBLE FOR VETTING QUALIFICATIONS AND ENSURING COMPLIANCE**

In the *NPRM*, the Commission seeks comment about how to enable a larger pool of qualified applicants to participate in the CAF, including by use of its forbearance authority.[46] Numerous parties commented on this issue, with many incumbent telephone companies arguing that the Commission must maintain the current system.[47] After reviewing these, ACA believes that AT&T's proposal best meets the Commission's policy objectives and the statutory requirements.

AT&T proposes that the submission of an ETC application should not be a prerequisite to participation in the auction, and the eventual ETC designation should be granted by the Commission, not a state PUC.[48] AT&T submits that this can be achieved by the Commission asserting exclusive jurisdiction over the designation of CAF ETCs.[49] As AT&T notes, section 214(e)(2) grants state commissions authority to "designate a common carrier . . . as

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45 *See* AT&T Comments at 118-120.

46 *NPRM*, ¶¶ 318-319.

47 *See, e.g.*, Comments of Independent Telephone & Telecommunications Alliance at 8; Comments of the Utah Rural Telecom Association at 3; Rural Cellular Association Comments at 20; Blooston Rural Carriers Comments at 7-9; Rural Telecommunications Group Comments at 4; Hill Country Telephone Cooperative Comments at iii, 6; Northern Telephone Cooperative Comments; Fidelity Telephone Company Comments, Fairpoint Communications Comments.

48 AT&T Comments at 100.

49 *Id.* at 107.

an eligible telecommunications carrier." Because broadband is an information service regulated by the Commission under Title I of the Act, the Commission has authority to create a separate process for evaluating CAF ETC applications.[50]

ACA also agrees with AT&T that each provider that prevails in the competitive funding-allocation process should be required to apply for designation as a CAF ETC. The Commission should designate that provider as a CAF ETC in all of the census blocks for which it is awarded CAF support and only in those census blocks.[51] Requiring broadband providers to apply for ETC status only after their bids are accepted would both encourage participation in the bidding process by eliminating a premature (and, at that time, unnecessary) regulatory classification and ensure that providers do not "find [] themselves designated [as ETCs], and subject to the obligations that go along with being designated, in areas where they do not win support."[52] Regardless of the procedure used, broadband providers should be designated as CAF ETCs only in those census blocks for which they actually receive CAF funding.

D. <u>OBJECTIVE FACTORS</u>

ACA urges the Commission to ensure that the market-based award mechanisms are conducted using objective, well-defined criteria involving the geographic area, the construction and service obligations, the level of broadband performance, and the price for service. CAF funds should be awarded in unserved areas only to broadband providers that agree to abide by these criteria.

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50 *Id.* For the offering of broadband service, since it is an information service, CAF ETCs would not need to comply with traditional state telecommunications requirements to provide such service. In addition, while ACA believes a CAF ETC should be obligated to provide voice service, this is ancillary to its broadband offering, and any service ETC requirements for such service also should be established by the Commission.

51 *Id.* at 101.

52 *Id.* at 101-102 *citing* NPRM ¶ 319.

With respect to obligations by CAF recipients regarding the terms of construction and service, some commenters agree with ACA that each CAF winner should be required to certify that it will provide broadband service to all housing units in the census blocks where it has been awarded funding.[53] Further, each winning bidder also should be required to commit to fully deploying service within the time period established by the Commission for such deployment and to continue providing service in the census blocks for a defined period of years thereafter.[54]

As for commitments by CAF recipients regarding the price for broadband service, the Communications Act, in general, provides that universal service funding shall ensure that all consumers have access to telecommunications services that are "reasonably comparable" and at rates that are "reasonably comparable."[55] Consequently, consumers in unserved areas should have affordable access to broadband services of the highest quality. Thus, price is an essential component of any auction award. For these reasons, ACA proposes that the Commission establish a uniform national price for broadband service, based on the average comparable rate for such service in urban areas. The Commission should recalculate this price every two years beginning on January 1, 2014.

E. BROADBAND PERFORMANCE SHOULD BE FORWARD-LOOKING

ACA reiterates that the Commission require auction winners to commit to provide service within the unserved area at national forward-looking broadband speeds that initially should be set at a minimum level of 16 Mbps downstream and 4 Mbps upstream. Requiring CAF recipients to commit to provide service at forward-looking higher speeds will help ensure

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53 *See, e.g.*, AT&T Comments at 105.

54 *Id.*

55 *See* 47 U.S.C. § 254(b).

that areas receiving support will have access to high-performance service necessary to access critical applications and content farther into the future.[56] As noted in ACA's initial comments, the RUS, as part of its new broadband grant rules, adopted a similar policy approach, defining the service area by taking a snapshot of currently offered speeds but requiring forward-looking speeds for the project.[57] As with the price for service, the national forward looking "urban" broadband speeds should also be recalculated every two years beginning on January 1, 2014 to ensure they are currently technically achievable and are the projected speeds in the latter two years of the service period.

F. PROVIDING A GRADUAL BUT NOT UNLIMITED TRANSITION TO THE CAF FOR ETCS WITH FEWER THAN 100,000 LINES

In its initial comments, ACA proposed that the Commission provide smaller telephone companies (ETCs with fewer than 100,000 lines in the aggregate) with the ability to elect to have a longer transition to be covered by the CAF.[58] ACA's rationale is based largely on the fact that these smaller providers are most reliant on current High-Cost funding to provide service to consumers, and they and their customers will suffer most if funding is reduced significantly and precipitously. Under ACA's proposal, smaller wireline ETCs could choose to continue to draw from the High-Cost fund for a period of eight years so long as they agree to commit to provide broadband service in their service areas at minimum performance levels (eventually 16 Mbps downstream and 4 Mbps upstream). At the end of the eight year period, High-Cost funding to these providers would sunset. The Commission would then disaggregate

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56 The Commission should permit temporary waivers from the performance requirements in least dense areas.

57 ACA Comments at 29.

58 *Id.* at 34-36. In addition, ACA noted in its comments (at n. 39) that any new funding program should not substitute for or otherwise reduce current High-Cost support going to Tribal Lands.

support in the overall service territory of the smaller carrier to ensure that no support is awarded within an area where broadband service is being offered. For areas that fall within the then current benchmark as being unserved, the Commission will hold reverse auctions to select service providers (which may be the smaller telephone companies) that will be eligible to receive capital grants to provide broadband service in the unserved areas.

Certain commenters agree, at least in part, with ACA's proposal that smaller wireline ETCs have a longer transition.[59] At the same time, ACA believes there are strong policy reasons to ensure that the transition is not endless. Just as the communications industry has changed greatly over the past decade, there is every reason to believe that there will be tremendous growth in technological developments producing new services and in entry by additional providers, even in rural, high-cost areas. As stated at the outset of these comments, the time has come to modernize the universal service fund, and the Commission should pursue that objective.

IV. CONCLUSION

In an era of robust competition in communications, universal service support serves an important objective: it ensures through effective and efficient support mechanisms that, where there is no private sector business case, residences and business have access to vital communications service. That means both the services to be supported and the means for that support need to evolve in response to consumer demands and market conditions. In this proceeding, the Commission properly seeks to undertake that difficult task by refocusing support to broadband service and by reforming the High-Cost fund. In its initial comments and these

[59] *See, e.g.*, NECA *et al.* Comments at 39-56; Hill Country Telephone Cooperative Comments at 5-6; Comments of Independent Telephone & Telecommunications Alliance at 8-13; Rural Telecommunications Group Comments at 10-12; Fairpoint Communications Comments at 12-15.

reply comments, ACA supports the Commission's objectives and many of its proposals and provides a series of refinements. ACA looks forward to working with the Commission as it seeks to adopt a decision later this year.

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